

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 14, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1991

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

DEBORAH J. HAGEN,

PLAINTIFF-APPELLANT,

v.

VITERBO COLLEGE,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for La Crosse County:
MICHAEL J. MULROY, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Deborah Hagen appeals from the trial court's summary judgment in favor of Viterbo College. The issue is whether Hagen was an at-will employee of the College. We conclude that she was. Accordingly, we affirm.

Hagen brought this action against her former employer, Viterbo College, contending that it had breached an employment contract with her when she was terminated. She argued that the contract arose from an employee handbook she received when she was hired. Based on the handbook, she argued that, after a three-month probationary period, she could only be terminated for cause. Viterbo College moved for summary judgment, arguing that the handbook did not create an employment contract. The trial court granted summary judgment in favor of the College.

Summary judgment allows controversies to be settled without trial where there are no disputed material facts and only legal issues are presented. *Preloznik v. City of Madison*, 113 Wis.2d 112, 115-16, 334 N.W.2d 580, 582-83 (Ct. App. 1983). On review of the summary judgment order, we employ the same methodology as the trial court. *Green Spring Farms v. Kersten*, 136 Wis.2d 304, 315, 401 N.W.2d 816, 820 (1987). If there is no genuine issue as to any material fact, and if the moving party is entitled to judgment as a matter of law, we will affirm the trial court's decision granting summary judgment. *Id.*

Representations in an employee handbook may limit the power of an employer to terminate an employment relationship which would otherwise be terminable at will. *Ferraro v. Koelsch*, 124 Wis.2d 154, 169, 368 N.W.2d 666, 674 (1985). We look to the language of the handbook and other evidence regarding statements made by the employee and the employer to determine whether there was an "exchange of promises" sufficient to constitute consideration for a contract. *Id.* at 164, 368 N.W.2d at 672.

The Viterbo College handbook's section entitled "Termination" provides:

If an employee resigns, is dismissed, or laid off, as much notice as possible (at least two weeks) should be given, in writing, to the other party....

All employees must subscribe to Viterbo College's performance and behavior standards. Dismissal for cause is infrequent; however, the College reserves the right to discharge employees at its sole discretion.

Non-compliance with the following policies shall be cause for reprimand and/or dismissal:

1. Unauthorized use of college records, or disclosure of information contained in such records, to unauthorized persons
2. Falsifying work records or time reports for oneself or another
3. Misappropriation or unauthorized possession of property belonging to the College, another employee, a student, or a visitor
4. Repeated absences, tardiness, or premature departure
5. Disregard of established safety, housekeeping, or sanitary conditions.

The handbook states that the College may discharge employees "at its sole discretion." This language is not ambiguous. It clearly provides that an employee may be discharged by the College at any time, for any reason. Although the handbook lists acts which *shall* be cause for reprimand or dismissal, the handbook does not provide that those acts are the *only* acts for which an employee may be disciplined or discharged.

The "Termination" section, when read in conjunction with the rest of the handbook, shows that the handbook falls short of the specific "exchange of promises" which engendered employment protection in *Ferraro*. Employees at Viterbo College are not required to accept the conditions in the handbook in

writing or orally in order to be employed by the College. Although the handbook stated that as much notice as possible, at least two weeks, “should” be given when an employee resigns, is dismissed, or laid off, the handbook did not threaten employees with an unfavorable report to future employers if they did not give two weeks notice. The handbook contains no provision regarding seniority or the sequence the College would use to lay off employees. The handbook makes a distinction between probationary and regular employment,¹ but does not imply that there is any additional job protection after the probationary period. The end of the probationary period simply triggers, among other things, the first employee evaluation.

The “Grievance Procedures” section of the handbook is most similar to the language of the handbook in *Ferraro*. An employee may “request a review of personnel practices through the appropriate channels” according to a series of steps. However, the steps may be taken to solve a variety of personnel issues, such as problems involving working conditions, and may be initiated by the employee or the employer. Most importantly, there is no guarantee that an employee may only be dismissed for “just cause,” or that a series of progressive steps will usually be followed prior to an employee’s termination as there was in *Ferraro*. When read with the rest of the handbook, the language in this section is not specific enough to give rise to something more than an at-will employment relationship.

¹ The handbook provides: “The probationary period is the first three months of employment. During this time the employee and supervisor determine[] whether continued employment will be mutually beneficial. Employment may be terminated by the employee or department supervisor during this period.”

In short, we conclude that the handbook did not change the at-will nature of the employment relationship between Hagen and Viterbo College. The trial court properly granted summary judgment in favor of the College.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5., STATS.

